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Jasper Benincasa Jr.  
Floerfida Benincasa  
9359 Roping Cowboy Avenue  
Las Vegas, NV 89178

FILED  
MAY 12 11 31 AM '06  
BANKRUPTCY COURT  
DISTRICT OF NEVADA

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY	)	
Debtor	)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
	)	
USA CAPITAL REALTY ADVISORS, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED	)	
FUND, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,	)	
LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,	)	
Debtor	)	
Affects:	)	
<input type="checkbox"/> All Debtors	)	
<input checked="" type="checkbox"/> USA Commercial Mortgage Co.	)	
<input type="checkbox"/> USA Securities, LLC	)	DATE: 6/5/06
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	TIME: 9:30am
<input type="checkbox"/> USA Capital Diversified Trust Deed	)	
<input type="checkbox"/> USA First Trust Deed Fund, LLC	)	

**MOTION FOR ORDER AUTHORIZING RETURN OF NON-INVESTED FUNDS  
OF JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA  
(hereafter "BENINCASA")**

Files a Motion for Order Authorizing Return of Non-Invested Funds of JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA.

This Motion is based upon the Points and Authorities attached hereto.

**POINTS AND AUTHORITIES**

**Facts**

The Debtors receipted for \$110,000.00 of BENINCASA's money on the eve of the Chapter 11 filing to be invested in Fiesta Development, Del Valle and Oak Shores II. See check Exhibit "A" which cleared on April 12, 2006 the banking system the day prior to the Bankruptcy filing. These funds were advanced to no one prior to the filing of April 13, 2006. The Movant bases this on the fact that no Deed of Trust has been recorded and USA Capital has told JASPER BENINCASA JR. that funds were never advanced and are still in the trust account. This is BENINCASA's first investment with USA Capital therefore BENINCASA was never overpaid interest nor does BENINCASA owe anything to USA Capital. The funds were merely receipted for and placed into the trust account on the eve of bankruptcy. They were disbursed to no one and not used for any purpose.


**The Law**

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B. Escrow Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180. BENINCASA is the owner of funds placed into Trust prior to investment. It would appear that under NRS 645B, the Debtor cannot claim that any of "recent check" Represented by Exhibit "A", is property of the estate. Indeed NRS 645B.165 through 180 make it very clear that the funds are trust funds very similar to those in an attorney's trust account and are given the same protection. The law at NRS 645B.180 specifically states that "Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage broker or his mortgage agents." To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession and should not be permitted to continue to invest private-investor funds after the filing of chapter 11.

The funds represented by Exhibit "A" do not belong to the Debtor and must be returned. This is clearly the law in our circuit. See Golden Mortgage v. Kennedy, 171 B.R. 79 (B.A.P. 9 Cir.) 1994. These funds are very different from the funds invested by other Investors who have a history with USA Capital and may owe USA Capital for overpayment of interest. The facts herein are very similar to those previously ruled on concerning return of investor's recently deposited easily identifiable funds which were not used for the intended purpose. See Motion for Order Authorizing Return of Investors Certain Escrowed Funds Intended for the Bundy Canyon Project filed herein on April 27, 2006 as Document #68.

### **Conclusion**

The Motion to Allow Payment of Non-Invested Funds should be granted and the Funds not invested by Debtors and turned over to Assignment holders should be returned to Movant upon entry of the Order of this Court plus 11 days.

/s/   
Jasper Benincasa Jr.

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# Exhibit "A"

Account: 1818239716  
 Check: 1001  
 Issued: April 11, 2006  
 Cleared: April 12, 2006  
 Amount: \$110,000.00  
 Deposited into: Wells Fargo Account  
 Account Name: Commercial Mortgage Company Investors Trust Account  
 Account Number: 0465657146

**FLOERFIDA BENINCASA**  
**JASPER BENINCASA, JR.**  
 530540962 04-12-06 7745 034/11/06  
 LAS VEGAS, NV 89178

1001

USA Commercial Mortgage Inv. Trust Acct. \$110,000-  
 one hundred & ten thousand only -

Washington  
 0465657146 718239716

Muneta / Day / Isoton

1818239716 1001 0000000000

INCLEARINGS  
 EL SEGUNDO CA  
 530540962 04-12-06

Order Of  
 Wells Fargo Bank  
 Las Vegas, NV 89193  
 122472049  
 For Deposit Only  
 Commercial Mortgage Company  
 Investors Trust Account  
 0465657146

WFB LA CA 12247  
 TRACER # 1698 PKT. 929  
 122105278  
 0621050243


### CERTIFICATE OF SERVICE

I, Jasper Benincasa Jr., hereby certify that a true and correct copy of the Notice of Motion and Motion for Order Authorizing Return of Non-Invested Funds of Jasper Benincasa Jr. and Flocefida Benincasa filed May 11, 2006 was forwarded to:

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by electronic service on the 12th day of May, 2006

/s/   
Jasper Benincasa Jr.